IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 11TH JULY 2007 / 20TH ASHADHA 1929

Crl.MC.No. 2220 of 2007()

CC.307/1999 of JUDL. MAGISTRATE OF FIRST CLASS COURT-III, NEYYATTINKARA

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PETITIONER:

T.PRABHAKARAN,
SECRETARY, RASALAM MEMORIAL CSI CHURCH,
NELLIKKAKUZHY, KANJIRAMKULAM, THIRUVANANTHAPURAM.

BY ADV. SRI.G.SUDHEER

RESPONDENTS: ACCUSED 1 TO 3 & STATE

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1. CHRISTUDAS, S/O. DANIEL,
KUTTITHANNI, CHRIST NIVAS, KANJIRAMKULAM DESOM,
THIRUVANANTHAPURAM.

2. DAVIDSON, S/O. CHRISTUDAS,
KANJIRAM NINNA KUZHIVILA VEEDU, THIRUPURATHOOR
DESOM, THIRUVANANTHAPURAM.

3. SATHYAKUMAR, S/O. RICHARD JAYSON,
SATHYA NIVAS, KANJIRAMKULAM,KANJIRAMKULAM VILLAGE,
THIRUVANANTHAPURAM.

4. STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

R4 BY PUBLIC PROSECUTOR SRI. GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 11/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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Crl.M.C.No. 2220 of 2007

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Dated this the 11th day of July, 2007

O R D E R

The petitioner is the defacto complainant in a prosecution initiated under Sections 420, 468 r/w. 34 I.P.C. The petitioner represents a local Church. It is the case of the petitioner that the local Church had advanced money to purchase an item of property in the name of the local Y.M.C.A. It is the further allegation that the office bearers of the local Y.M.C.A. had executed a document to convey the title of the local Y.M.C.A. in the property to the national Y.M.C.A. The petitioner, in these circumstances, alleged that the office bearers of the local Y.M.C.A. who had executed the document had committed the offences punishable under Sections 420, 468 r/w. 34 I.P.C. Investigation was conducted by the police. Final report was filed and cognizance was taken by the learned Magistrate.

2. The accused appeared before the Magistrate and the learned Magistrate proceeded to consider the question of framing charge under Section 239/240 Cr.P.C. The accused had produced documents - judgment and decree of a Civil Court - which showed that the civil court had accepted the case of the accused that the

property belonged to the local Y.M.C.A. The learned Magistrate by the impugned order produced as Annex.E took the view that the charge against the accused is groundless and accordingly proceeded to pass Annex.E order. The petitioner challenged that order before the learned Sessions Judge in revision. The learned Sessions Judge, by the impugned order, copy of which is produced as Annex.F, took the view that revisional powers do not deserve to be invoked to interfere with the impugned order passed by the learned Magistrate.

3. The State has not challenged the order. The petitioner realises obviously that a second revision is not maintainable. That explains why the petitioner had entered this Court through the door of Section 482 Cr.P.C. The petitioner contends that the concurrent orders of the courts below are not just and fair. The same warrants interference by invoking the extra ordinary inherent jurisdiction vested in this court, it is contended.

4. I must at the outset alertly remind myself of the nature, quality and contours of the jurisdiction under Section 482 Cr.P.C. It is an extra ordinary inherent jurisdiction which is sought to be invoked. Such jurisdiction is to be invoked only sparingly and in exceptional cases, that too, only in aid of justice. When a second revision is barred under the

provisions of Section 397(3) Cr.P.C. very strong and compelling reasons must be shown to exist to justify entertainment of a challenge against the orders against the express mandate of Section 397(3) Cr.P.C.

5. What are the grounds? First of all it is contended that the petitioner or the prosecutor had no notice of a hearing under Section 239 Cr.P.C. No application had been filed by the accused persons and in these circumstances the learned Magistrate erred in considering the question of discharge under Section 239 Cr.P.C. I find no merit in this contention at all. No separate petition is necessary from any one for the court to consider the question of framing charge/discharge under Section 239/240 Cr.P.C. Even without the request of any one the court is obliged to post the case for framing of charge and take appropriate decision. The prosecution has no grievance that he was not heard. Petitioner has no right to be heard. That contention cannot succeed.

6. The accused had produced a document before the learned Magistrate at the stage of hearing on the question of charge. It is contended by the learned counsel for the petitioner that no such document could have been produced by the accused or received at the stage of Section 239/240

Cr.P.C. I agree with the learned counsel on this aspect. But the question is, whether even without any such document produced, the impugned order can be held to be justified. I shall exclude the said document from consideration completely. Even then it has to be held that the impugned order does not suffer from any vice, which would justify the invocation of the powers under Section 482 Cr.P.C.

7. The purchase of the property was in the name of the local Y.M.C.A. The accused persons undisputedly are office bearers of the local Y.M.C.A. The disputes about their conduct of execution of the document to convey their right to the national Y.M.C.A. cannot at any rate be held to be anything other than a pure and simple civil dispute. The learned Magistrate, according to me, was eminently correct in coming to the conclusion that there are no incidents of culpability or criminality in the alleged conduct of the accused persons. The learned Sessions Judge has also concurred with the said stand taken by the learned Magistrate. In any view of the matter, I do not find any such vice vitiating the impugned order that would justify the invocation of the powers under Section 482 Cr.P.C. by this Court.

8. This Crl.M.C. is hence dismissed.

(R. BASANT)
Judge

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